



State of Washington
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Added or Changed Point of Withdrawal/Diversion

PRIORITY DATE
Class 3 (Year 1869)

WATER RIGHT NUMBER
Touchet River Adjudicated Certificate No. 13

MAILING ADDRESS
Bryan Borup
P.O. Box 104
Prescott WA 99348

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.1	CFS	17.6

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.067 cfs 4/1 – 9/15 0.10 cfs 9/15 – 4/1	17.6

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
5				

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
WALLA WALLA	Touchet River	Walla Walla River	32-WALLA WALLA

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
TOUCHET RIVER	360902110003		9N	36E	2	NW¼SE¼	46.28628°	-118.26852°
Datum: NAD83/WGS84								

Proposed Source: 2020 feet north and 1510 feet west from the SE corner of Section 2, T. 9 N., R. 36 E.W.M.

Place of Use (See Attached Map)**PARCELS (NOT LISTED FOR SERVICE AREAS)**

360902110002, 360902110003

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The SE¼ north of the Touchet River and the NE¼ south of O.W.R. & N. Co. right of way, in Section 2, T. 9 N., R. 36 E.W.M.

Proposed Works

The irrigation system is comprised of a 75-hp pump station, mainline, and wheel lines

Development Schedule**BEGIN PROJECT**

Started

COMPLETE PROJECT

Completed

PUT WATER TO FULL USE

Put to Use

Measurement of Water Use

How often must water use be measured?

Bi-weekly

How often must water use data be reported to Ecology?

Annually (Jan 31)

What volume should be reported?

Total Annual Volume

What rate should be reported?

Annual Peak rate of Diversion

Bi-weekly means every two weeks

Provisions**Measurements, Monitoring, Metering and Reporting**

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Eastern Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Eastern Regional Office for forms to submit your water use data.

Department of Fish and Wildlife Requirement(s)

The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/about/contact/>

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Proof of Appropriation

The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

General Provisions

In the event of a water short year, upon request by Ecology, the acres authorized under Touchet River Adjudicated Certificate No. 13 shall be identified within the place of use for the purpose of regulation.

After all rights scheduled in Touchet River Adjudication Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15th to April 1st. The total diversion shall not exceed 3.52 acre-feet per acre for any one year beginning September 15th.

TRAC No. 13 and No. 318 shall have a total maximum diversion of 2.033 cfs and 475.6 acre-feet per year for the irrigation of 135 acres.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CS3-*34013J, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual

receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2012.

Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT

Jeff MacLennan, Department of Ecology

Water Right Control Number CS3-*34013J

Touchet River Adjudicated Certificate No. 13

BACKGROUND

Mrs. Borup filed two change applications concurrently under Touchet River Adjudicated Certificate Nos. 13 and 318. Both share the same diversion. Each application will have decisions based on its respective findings.

Description and Purpose of Proposed Change

An application for change was submitted by Bryan Borup of Prescott, Washington, to Ecology on June 30, 2003. Mr. Borup proposes to change the authorized point of diversion under Touchet River Adjudicated Certificate No. 13 (TRAC No. 13). The change to the authorized point of diversion is intended to correct the location of the point of diversion to that actually being used.

Table 1 below compares the existing and proposed attributes of the water right.

Table 1. Attributes of the Existing Water Right and Proposed Change

	Existing	Proposed
Name	Mary A. Painter, et al.	Jill Borup
Priority Date	Class 3	
Change Application Date		6/30/2003
Instantaneous Rate	Up to 0.1 cfs	Same
Annual Quantity	30 acre-feet per year	Same
Purpose(s) of Use	Irrigation of 5 acres	Same
Period of Use	Per Season Starting 9/15	Same
Place(s) of Use	Approximation: Portions of Section 2 within T. 9 N., R. 36 E.W.M.	Approximation: Portions of Section 2 within T. 9 N., R. 36 E.W.M.

Proposed Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River Diversion	360902410003	9N	36E	2	NW¼SE¼	46.28628°	-118.26852°

Authorized Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River Diversion	360901410009	9N	36E	1	NW¼SE¼		

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in *The Times* during the weeks of June 15th and 22nd, 2006. No protests were received.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

This application does not meet any of the above listed conditions. It is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R. D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps, LandSat imagery, and aerial photographs; (4) diversion works and place of use; (5) State of Washington Irrigation Guide (WA210-VI-WAIG, AMEND. 1 November 1990); (6) Touchet River Adjudication; and (7) discussions with Department of Ecology regional program staff.

Ecology employees Dan Tolleson, Leigh Bedell, and Jeff MacLennan met with Justin Gagnon at the project site on February 14, 2012. Mr. Gagnon and his father Joe Gagnon are leasing the land from Mrs. Borup. The project is located about two miles east of Prescott, Washington. The water right is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The authorized place of use (POU) lies within the east half of section 2, T. 7 N., R. 34 E.W.M. It includes all the NE $\frac{1}{4}$ south of the railroad tracks, the W $\frac{1}{2}$ SE $\frac{1}{4}$, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$. The Touchet River flows northwesterly through the SE $\frac{1}{4}$. The portion of the POU south of the river is very steep and unsuitable for farming. The authorized place of use allows for up to 5 acres of irrigation within the POU. Since the Touchet River Adjudication, however, the POU has been subdivided into three parcels. The southern parcel includes that portion south of the river and approximately 26 acres along the length of the north bank of the river. That leaves about 139 acres available for farming on the relatively flat portion north of the river. Mrs. Borup has been irrigating 135 acres of the north portion. According to the Walla Walla County Assessor's Office there is a small parcel, less than an acre in extent, not owned by Mrs. Borup that is within the current POU. This parcel will be discussed below.

The authorized point of diversion was on the Touchet River in section 1, T. 9 N., R. 36 E.W.M. Mr. Borup passed away since submitting this application. Mrs. Borup does not know exactly where the original diversion was located or why Mr. Borup moved the diversion to its current location. According to the application, the change in the diversion's location occurred decades ago. This change application proposes to move the authorized point of diversion in section 1 to the location where it is currently being used in section 2. The proposed point of diversion is an existing pressurized pumping station with associated fish screen located on the Touchet River. The pumping station is on land that is not owned by Mrs. Borup. According to Mr. Gagnon, there is an easement in place.

History of Water Use

Aerial photographs and LandSat imagery were used to verify the extent of historical beneficial use of this project. Using imagery dating back to the 1970's, it appears the parcels within the place of use owned by Mrs. Borup were irrigated. Aerial photos show 135 acres being irrigated. Of this 135 acres, 5 acres are irrigated under TRAC No. 13, leaving 130 acres irrigated under TRAC No. 318. There is no historical evidence of irrigation in the portion of the original place of use south of the Touchet River. The legal description for the place of use is therefore amended accordingly.

There is a small parcel within the POU that does not belong to Mrs. Borup. The Walla Walla County Assessor's Office identified Mrs. Loree Price as the owner. Jeff MacLennan contacted Mrs. Price on February 29, 2012, to ensure she would allow continued irrigation of her property. According to Mrs. Price, she abandoned the property several years ago. The property defaulted back to Household

Financial Corporation (HFC); and HFC has refused to pay property taxes. It appears to be a parcel without an owner.

There is also a question as to the exact location of this parcel. Mrs. Price says she lived on the property for a number of years, but no structures appear in this parcel in any of the historical aerial photos. Regardless of the county's location of this parcel, however, there has been no change to the place of use of the water right and, therefore, is still attached to the land which includes this parcel.

The maximum authorized water duty of this certificate is 6 acre-feet per year per acre for any one year beginning September 15th. According to the adjudication, water can be diverted from April 1st to September 15th of each year to the lands irrigated from the Touchet River at a rate not to exceed 1 cubic foot per second for each 75 acres for land east of the township line between ranges 34 and 35 east of the Willamette Meridian. If there is still water available during this period after all rights have been filled, the excess may be diverted in the order of scheduled priority in amounts sufficient to increase the rate to a maximum delivery of 1 cubic foot per second for each 50 acres of land. The diversion rate from September 15th to April 1st shall not exceed 1 cubic foot per second for each 50 acres of land in the scheduled priority, with the total diversion for any given tract of land not to exceed 6 acre-feet per acre per year.

According to Mr. Justin Gagnon, the current lessee of this property, this right has been used to irrigate alfalfa. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.47 acre-feet per acre is required for alfalfa in the Dayton area. This place of use falls into the Dayton area. At a 70% efficiency rate of application, the approximate maximum water duty for alfalfa is 3.52 acre-feet per year per acre. The resulting annual requirement would then be 17.6 acre-feet per year. This is a reduction in the annual water duty from the originally authorized 30 acre-feet per year. The reduction is possible through the use of more efficient irrigation practices.

The point of diversion serves TRAC No. 13 and No. 318 simultaneously. TRAC No. 13 authorizes 0.067 cfs (30 gpm) during the irrigation season, April 1–September 15, and 0.1 cfs the remainder of the year. TRAC No. 318 authorizes 1.933 cfs (867 gpm) during the irrigation season, April 1–September 15, and 2.9 cfs the remainder of the year. Mr. Gagnon claims the pumping station contains a 75-hp pump. Using the equation 1 below, assuming a pump efficiency of 50% and a system pressure of 60 psi, the pump is capable of more than 950 gpm. Mr. Gagnon reported he typically pumps at a rate of about 800 gpm from April through September. Should regulation be enforced, however, it is likely TRAC No. 13 will be allowed to continue irrigation, but TRAC No. 318 will be curtailed. Under this scenario, the pumping rate will have to be cut back to 0.067 cfs or 0.1 cfs depending upon the period of regulation.

Eqn. 1.
$$Q_i = \frac{3960HP(P_{eff})}{2.31(psi) + lift}$$

HP = horsepower

P_{eff} = pump efficiency

psi = pressure at the pump outlet

3960 & 2.31 – conversion factors

lift = elevation difference between in-take
and point of delivery

Purpose for Change

The primary purpose of this change is to account for the change in the location of the point of diversion. The change to the authorized point of diversion is a downstream move of approximately 1.5 miles to an existing diversion structure. According to Mr. Borup's explanation in the application, the originally authorized diversion was abandoned decades ago. Neither Mrs. Borup, the current land owner, nor Mr. Gagnon, the current lessee, know where the original diversion was located or why it was moved. The current location is more conveniently located to the place of use, however.

Other Rights Appurtenant to the Place of Use

A review was conducted for any rights that might overlap the authorized place of use (POU). The only other right appurtenant to the POU is Touchet River Adjudicated Certificate No. 318. TRAC No. 13 and TRAC No. 318 are primary additive rights. The attributes of the TRAC No.318 right are:

2.9 cfs 9/15 – 4/1 and 1.933 cfs 4/1 – 9/15
6 acre-feet per year per acre
Irrigation of 145 acres within the same POU as TRAC No. 13
Touchet River Adjudication Class 64

TRAC No. 318 shares the same source and irrigation system with TRAC No. 13 and is also the subject of a similar change application. Because TRAC No. 318 is a class 64 right, water is likely to not be available during periods of regulation.

Impairment Considerations

"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection; and/or 2) to prevent the beneficial use of the water to which one is entitled; and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200); and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The applicant is requesting approval for the change in the authorized point of diversion for TRAC No. 13. The change to the authorized point of diversion is a downstream move of approximately 1.5 miles to an existing diversion structure. According to the application, the originally authorized diversion was abandoned decades ago and water has been diverted from the proposed diversion without issue since its relocation. There are no major changes or diversions in the river between the authorized POD and the proposed POD. Therefore, no impairment is anticipated by recognizing the change in the authorized point of diversion. The proposed change will not increase the amount of water withdrawn from the Touchet River, nor will it increase or expand the right.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In conclusion, there is a water right available for change under Touchet River Adjudicated Certificate No. 13. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request to change the authorized point of diversion be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, and following.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0.067 CFS from April 1 to September 15
0.10 CFS from September 15 to April 1
17.6 acre-feet per year
Irrigation of 5 acres

Point of Diversion:

2020 feet north and 1510 feet west from the SE corner, being in the NW¼SE¼ of Section 2, T. 9 N., R. 36 E.W.M.

Place of Use:

The SE¼ north of the Touchet River and the NE¼ south of O.W.R. & N. Co. right of way, in Section 2, T. 9 N., R. 36 E.W.M.

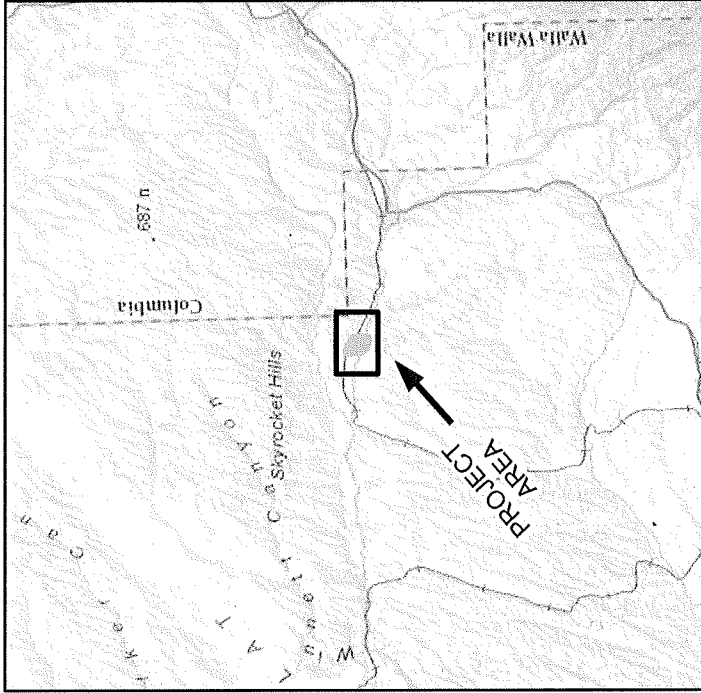
Jeff MacLennan, Report Writer

Date

If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

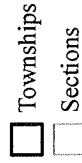
ATTACHMENT 1

Mrs. Jill Borup
CS3-*34013J
T09N/R36E



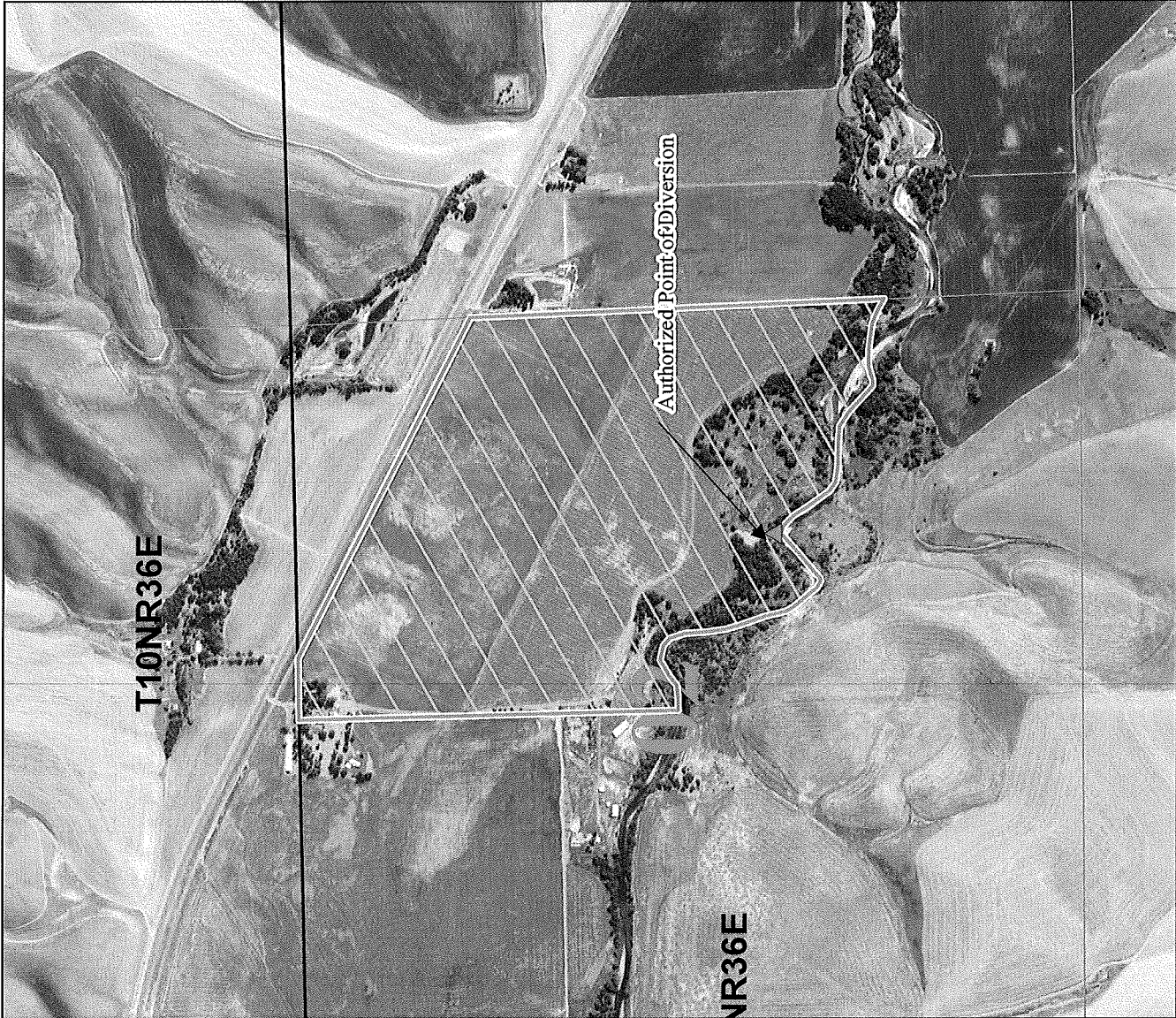
Basemap - (ESRI US Topographic Maps)

Legend



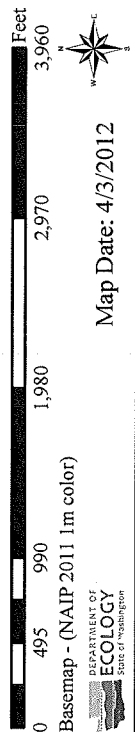
Authorized Place of Use

▲ Authorized Point of Diversion



Comment:

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.



Map Date: 4/3/2012

Basemap - (NAIP 2011 1m color)
DEPARTMENT OF
ECOLOGY
State of Washington